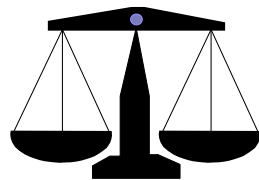


CITY OF CINCINNATI



Tenth Status Report to the Independent Monitor

November 12, 2004



Cincinnati Police Department

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I. INTRODUCTION

In April 2001, the Mayor of Cincinnati, and other interested persons within the City, requested the United States Department of Justice (DOJ) to conduct a review of the Cincinnati Police Department's (CPD) policies and procedures, specifically those that related to the uses of force. This request indicated the City's commitment to minimizing the risk of excessive Use of Force in the CPD and to promoting police integrity. In response to these requests, the DOJ launched an investigation pursuant to authority granted under 42 U.S.C. 14141, the Violent Crime Control and Law Enforcement Act of 1994.

The DOJ's investigation, conducted with the full cooperation of the City, included extensive interviews with City and CPD officials, CPD officers, leaders of the Fraternal Order of Police (FOP) and the African-American police officers' association (Sentinels), community members and civil rights organization representatives.

At the close of the investigation, which lasted approximately one year, the DOJ determined that the jurisdictional requirements of 42 U.S.C. 14141 were sufficiently satisfied to permit the Parties to enter into the **Memorandum of Agreement (MOA)**. As a result of the City's and the CPD's high level of voluntary cooperation and willingness to implement meaningful change, the DOJ believed the MOA, rather than contested litigation, represented the best opportunity to address the DOJ's concerns. On April 11, 2002, history was made in the City of Cincinnati. The City of Cincinnati and the United States Department of Justice entered into the landmark Agreement.¹

At the same time, representatives for the City, the Cincinnati Black United Front (CBUF), the American Civil Liberties Union of Ohio (ACLU), and the Fraternal Order of Police (FOP) executed the **Collaborative Agreement (CA)**. Brought about in part by a series of legal actions citing patterns of discrimination by police, this latter Agreement also served as an alternative to court litigation. Under this Agreement, the Federal District Court introduced a process where various stakeholders in the community could examine the broader social conflicts in the City by gathering the views of as many citizens as possible on improving the relationship between police officers and the community. Through the distribution of questionnaires and a series of public meetings involving different segments of the community, the following goals became the cornerstones of the Collaborative Agreement:

¹ Neither the City's entry into this Agreement, nor its decision to implement changes in CPD policies and procedures is an admission by the City, the CPD, or any officer or employee of either, that any of them have engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.

1. Police officers and community members will become proactive partners in community problem solving.
2. Police officers and community members will build relationships of respect, cooperation, and trust within and between the police and the citizens.
3. Police officers and community members will work to improve education, oversight, monitoring, hiring practices, and accountability of the Cincinnati Police Department.
4. Police officers and community members will ensure fair, equitable, and courteous treatment for all by members of the police department.
5. Police officers and community members will create methods to establish the public's understanding of police policies and procedures and to recognize exceptional service provided by members of the police department.

Implementation of both Agreements will not only reform police practice, but will enhance trust, communication, and cooperation between the police and the community. The settlements have fostered a union that has motivated all segments of the community to come together and focus on building the positive and productive relations necessary to maintain a vibrant city core and surrounding metropolitan area. The City of Cincinnati is enthusiastic and committed to this endeavor and has already begun initiatives to involve virtually all City departments in the process.

The two Agreements will be overseen by an Independent Monitor. Consistent with the consensus decision-making process incorporated in the collaborative process, all collaborative partners unanimously selected the independent monitor.

I. GENERAL POLICIES

A. Mental Health Response Team (MHRT)

The MOA's requirements with regard to the MHRT are located in paragraph 10.

Monitor's Previous Assessment

The Monitor concluded in the most recent status report that CPD policies, training, operations and supporting documentation met the MOA requirements.

Status Update

➤ **Training**

The Police Academy, in partnership with the mental health professionals, conducted an eight-hour in-service training day for all MHRT officers in late September. The training reviewed and addressed various issues that have been encountered since the program's inception, as well as provided a refresher of other mental health topics. Training materials are included as Appendix Item 1.

To maintain a full compliment of MHRT officers, a 40-hour training session for approximately 30 new MHRT candidates will be conducted in November 2004.

➤ **MHRT Availability**

To ensure the availability of MHRT officers 24/7 and city-wide, the CPD continues to track the number of MHRT officers deployed on a daily basis. The tracking process allows the CPD to take a look at MHRT staffing levels by shift, district, and department-wide. According to the July, August, and September staffing reports, the CPD was able to provide consistent MHRT service. The MHRT staffing reports are included as Appendix Item 2.

➤ **MHRT Officer Dispatch Summary**

Effective May 1, 2003, the Police Communications Section began to record the dispatch disposition of MHRT officers to all calls involving suspected mentally ill individuals. When dispatching these calls, the dispatcher will make an entry into a designated field for all MHRT calls, indicating one of the following dispositions:

- MHD - A MHRT unit was dispatched to the call.
- MHNA - A MHRT unit was not dispatched because all MHRT units city-wide were busy.
- MHNW - There were no MHRT units working in the city.

During this reporting period, the CPD received 1,619 calls involving mentally ill persons. In 152 of those instances, the call did not meet the criteria for dispatch and was cancelled or the call was handled by another agency. In 237 cases, the call was dispatched as another incident type and later changed to a MHRT by the responding officers. An additional 109 calls handled were categorized as

“Unknown,”². This equates to 1,121 calls eligible for MHRT officer dispatch. For 991 of the calls, a MHRT officer was dispatched. For this reporting period, there were only 27 calls for which an MHRT officer was working but not available for dispatch, and there were no instances for which a MHRT officer was not working. A monthly analysis of these calls is included in Appendix Item 3.

➤ **Mobile Crisis Team Workers**

The Psychiatric Emergency Services Department of University Hospital continues its partnership with the CPD. This partnership has enabled Mobile Crisis Team personnel to work within police districts in conjunction with police personnel. Currently, the program operates in Districts One and Five.

For the third quarter of 2004, statistics were maintained for individuals in both districts who could be identified as being in need of mental health services. Identification is made through an incident history, police reports (Form 316), or by hospital records. Information regarding the number of MHRT runs handled by police, the Mobile Crisis Team, or a combination of both is also tabulated. Once an individual has been identified, social demographic data regarding the subject and the outcome of each incident is documented and entered into a database in each of the districts.

2004 Third Quarter	District One	District Five
Total runs	296	215
CPD only	213	122
Mobile Crisis Team only	24	36
CPD assisted by the Mobile Crisis Team	44	46
Mobile Crisis Team assisted by CPD	15	11
Total individuals identified	211	192
Mobile Crisis Team consultations	8	2

B. Foot Pursuits

The provisions of the MOA related to foot pursuits are located in paragraph 11.

Monitor's Previous Assessment

The Monitor stated that the CPD's foot pursuit policy complies with the MOA and that supervisors are properly documenting their reviews of foot pursuits in use of force incidents.

² The dispatcher is required to fill in the MISC field on the complaint mask to indicate MHD, MHNA, MHNW, or MHNS (Mental Health Not Sent). If MHNS is used, the dispatcher is to note in the text which field supervisor directed that a MHRT officer not be sent. In a routine audit this quarter, the CPD found many incidents that were not marked as such. Therefore, the reason for MHRT officers not being sent is unknown. This problem appears to be exclusive to this reporting period and Police Communications supervisors have taken action to correct the problem.

Status Update

Supervisors continually review foot pursuits in every Use of Force report in relation to the chase being tactically sound and in conformance with the CPD's policy and procedure. The tactical and risk considerations involving foot pursuits are reiterated in roll call training. The roll call foot pursuit scenarios can be found in Appendix Item 4. The related roll call training calendars are included in Appendix Item 25.

III. USE OF FORCE POLICY

A. General Use of Force Policies

The MOA's requirements pertaining to use of force are located in paragraphs 12 and 13.

Monitor's Previous Assessment

The Monitor concluded the CPD's current Use of Force policy is in compliance with the MOA.

B. TASER

Monitor's Previous Assessment

The Monitor concluded the new provisions relating to TASER usage and reporting comply with the MOA. Last quarter, the Monitoring Team reviewed 19 of the 177 reported TASER incidents. In each case, the Monitor concurred with the CPD supervisor's findings and conclusions that the TASER was appropriately deployed and used consistent with policy, training, and state law.

The Monitor, however, expressed the following reservations over TASER usage:

- The total number of use of force incidents has increased, attributable to TASER usage.
- There is a concern over injuries connected with its usage, particularly from the subject's fall to the ground after being hit by the TASER.
- The Monitor believes TASER use warrants careful monitoring and evaluation by the CPD, to "ensure officers are properly considering alternatives to force, such as de-escalation, verbal commands, or arrest control techniques." The Monitor also cautions that officers still need to consider whether any use of force is needed, especially true in situations where the subject's noncompliance is limited to "conspicuously ignoring" the officer.
- The Monitor is concerned that officers may not be giving subjects sufficient time to comply with commands prior to using second or subsequent deployments of the TASER.

Status Update

The following table delineates and compares use of force incidents from the first three quarters in 2003 to the same time period in 2004.

Use of Force Table

	01/01/03 – 09/30/03	01/01/04 – 09/30/04
Chemical Irritant	440	160
Physical Force³	238	157
PR 24	13	1
Beanbag / Foam	4	1
Pepperball	7	0
TASER	3	447
Canine	9	8
Firearms Discharge	1	5
Total	715	779

Based on the statistics included in the table, the CPD's use of force incidents have increased by 9%. However, this increase may be attributed to two significant factors.

First, overall arrests have increased by 2.7% over last year, which partially addresses the 9% increase.⁴ Further analysis reveals that the increase of Part 2 arrests is driven by a 6.5% increase in drug arrests.⁵ This is significant because drug arrests often result in the suspect resisting arrest (fight or flight) due to the existence of contraband on their person. As a result of the suspect's non-compliance, force is sometimes required to effect the arrest. Therefore, an increase in overall arrests, specifically drug arrests, directly contributes to an increase in the number of instances that force is used. It should be noted that in spite of the increases in activity, the ratio of use of force incidents to arrests remains consistent at 2% in 2003 and 2004.

Second, the force option with the greatest increase is TASER usage. This may be a result of the TASER's effectiveness in achieving compliance in a wider range of non-compliance situations, such as foot pursuits. TASERS have been used to apprehend fleeing suspects who would have normally eluded capture. TASERS have an effective range of up to 21 feet and can be deployed from various directions as it relates to officer/suspect positioning. Chemical irritant has an upper range of ten feet and must be sprayed on the upper torso or face to be effective. Thus, it is highly unlikely an officer would use chemical irritant during a foot pursuit to achieve an arrest.

In regards to the Monitor's concerns about injuries to suspects related to TASER usage, an analysis of TASER usage reports reveals that injuries continue to be minor and infrequent. The severity of these injuries to suspects are similar to the injuries that occurred prior to the deployment of the TASER in alike, non-compliant suspect situations where other force options, such as takedowns and other types of physical force (including PR-24's), were utilized to effect arrests. As reported last quarter, of the 177 deployments of the TASER, there were 25 injuries associated with its usage. Most, if not all of the injuries were abrasions and lacerations sustained due to the

³ Includes takedowns with injury and hard hands without injury (noncompliance)

⁴ Part 1 and Part 2 arrests 01/01/03 – 09/30/03 = 36,456

Part 1 and Part 2 arrests 01/01/04 – 09/30/04 = 37,433

⁵ Drug arrests 01/01/03 – 09/30/03 = 8,932

Drug arrests 01/01/04 – 09/30/04 = 9,509

suspect falling to the ground immediately after deployment. Of that 25, only 1 injury was serious. During the third quarter, there were 198 deployments of the TASER with 27 minor injuries with only 1 again being serious.

Injuries from TASER deployment are summarized in Appendix Item 5.

Use of Force statistics for the current reporting period have been included in Appendix Item 6.

The table below breaks down suspect injuries resulting from force:

Prisoner Injuries Resulting from Police Contact⁶

	02/01/03 – 09/30/03	02/01/04 – 09/30/04⁷
Hard hands with injury and foot pursuits	150	71
Beanbags	1	0
Pepperball	7	0
40 mm foam	0	0
TASER	0	59
Other force⁸	77	19
Total	235	149

This table highlights that the number of injuries to prisoners have declined significantly between 2003 and 2004, even though the number of use of force incidents have remained relatively consistent. In comparing the two periods, the total number of **injuries to suspects represents a 37% decrease**, which can be attributed to the deployment of TASERS. TASER usage has eliminated the need for officers to engage in physical confrontations that potentially may lead to suspect and/or officer injury. As previously stated, usage of the TASER has replaced other uses of force, such as strikes and impact weapons that may have an increased risk of suspect injury.

TASERS have reduced injuries to officers as well. During the period February 1, 2003 and ending September 20, 2003, the CPD reported 47 officers being injured as the result of arrest situations. During the same time period in 2004, that number dropped to 25, which translates to an **88% reduction in officer injuries**.

As for the Monitor's concerns whether officers are properly considering alternatives to force, such as de-escalation, verbal commands and arrest control techniques, the CPD believes the Monitor may not understand the context within which the de-escalation option is available to officers in the CPD's Use of Force procedure (12.545). Officers may disengage when they find themselves at great risk if they continue their attempt to arrest and handcuff a person or if innocent people are in jeopardy if the arrest attempt is continued. The reason for this statement in this procedure is to insure that officers

⁶ Does not include ingestions of contraband, injuries sustained to prisoners as a result of a vehicle crash from a pursuit, injuries from canine bites, etc. (any injury where the TASER would not have been a force option in an incident is not included). In regards to contraband, suspects normally swallow contraband before the officer comes in contact with them.

⁷ Aggressive implementation of the TASER began in February 2004

⁸ Includes strikes, kicks, PR 24, firearms

know they have this option, because their job description directs officers to move promptly to arrest offenders through individual effort and/or all department resources. Therefore, the disengagement discussion within 12.545 is paired with officer safety and the need for immediate apprehension.

Disengagement is not discussed in the procedure as a means of limiting the amount or degree of force used on a subject who is being arrested. If an officer is succeeding in their attempt to accomplish handcuffing, using reasonable techniques, tactics, weapons, and force, there is no requirement to disengage. They should continue until the subject is handcuffed and physically arrested. Note the two underlined words – officers may disengage, they are not required to disengage in order to help the subject of the arrest avoid further use of force by police. The subject is legally required to submit to arrest. For example, officers are required to disengage from a vehicle pursuit if innocent persons are at risk; they are not required to disengage from a vehicle pursuit because the subject is at risk.

In regards to whether verbal commands are being used as an alternative to using force, each use of force incident results from the suspect's noncompliance with officers' commands (quite often repeated commands). Every Use of Force report documents these commands. If a command is not made prior to a use of force, e.g. suddenness of an attack by the suspect, the report must document the exigent circumstances for the command not being made.

The Monitor also cautions that officers still need to consider whether any use of force is needed, especially where the subject's noncompliance is limited to "conspicuously ignoring" the officer. Conspicuously ignoring is a form of non-compliance. If an officer has probable cause to make an arrest and the suspect "conspicuously ignores" the officer by walking/running away or failing in any way to comply with arrest, the officer has the right to use reasonable force to effect the arrest, which could include the use of the TASER.

The Monitor is concerned that officers may not be giving subjects sufficient time to comply with commands prior to using second or subsequent deployments of the TASER. The Monitor reviewed 19 TASER reports in their October 1, 2004 quarterly report (Chapter 4 -TASER section) as well as a few additional TASER cases included in the IIS section of Chapter 4. In only **one** case (#04102) did the Monitor note that there was a question of allowing the suspect sufficient time to comply. Further, in that specific situation, the issue was addressed by the reporting supervisor.

C. Chemical Spray

MOA provisions pertaining to chemical spray are found at paragraphs 14, 15, and 16.

Monitor's Previous Assessment

In the report, the Monitor indicated the CPD's chemical irritant policy is in compliance with the MOA. The Monitor reviewed eight incidents in which a chemical irritant was used to subdue a subject. In each incident, proper target area, duration, and decontamination was demonstrated, and the use of the chemical irritant was consistent

with departmental policy and state law.

In regards to the use of chemical spray on restrained individuals, the Monitor also concluded that officers deployed chemical spray in situations consistent with the MOA.

Status Update

There were 20 deployments of chemical irritant for the third quarter. They have been summarized in Appendix Items 7, 8, 9, 10, and 11. Of the 20 reports, 4 do not contain a warning of pending force or an explanation as to why no warning was given. As a result of this lack of documentation, the CPD has taken further steps to ensure that this problem is corrected in the future. In early August, wallet size laminated reminder cards were issued to each supervisor containing the following information:

Critical Issues which must be addressed in the narrative of Use of Force Reports

- Decision to arrest, incl. the basis for the stop and seizure
- Verbalization, including warning of impending force
- Suspect's noncompliance
- Officer's counterforce
- Exigent circumstances, e.g. reason for no verbalization, reason for partial/no effect on force used, etc.
- Analysis of foot pursuit
- Analysis of the propriety of the officer's use of force.
Note: If two or more different types of force are used, e.g. takedown and Taser, the analysis should evaluate each.

In addition, each day the lieutenant assigned to the CPD's Police Relations Section reviews drafts of Use of Force reports which occurred the previous day to ensure these points are being covered. This reminder card and redundancy of review is designed to ensure that all Use of Force forms are completed in accordance with policy.

D. Canine

The MOA provisions relating to canine policy are located in paragraph 20.

Monitor's Previous Assessment

The Monitor found that the current CPD canine policy meets the MOA provisions.

Regarding incident reporting, in the last quarter the Monitor Team reviewed 26 Canine Deployment Forms for incidents in which suspects were apprehended but not bitten. The Monitor Team noted the CPD Canine Unit was compliant with the MOA requirement that canine searches be authorized by supervisors, as well as the requirement that off leash deployments be limited to commercial buildings or for suspects reasonably believed to have a weapon.

However, the Monitor Team found the deployment forms did not require the canine handlers to document whether they provided a loud and clear announcement before the deployment.

The Monitor Team also stated in their report that they were unclear what constituted a canine bite, i.e. whether a “hold” or bite to clothing and not skin constituted a bite.

The Monitor Team reviewed no canine investigations during the previous quarter. The Team is waiting for several outstanding investigations to review.

Status Update

During this reporting period, the CPD had three incidents involving a canine bite. The first occurred on July 28, 2004. This incident occurred after an aggravated robbery offense involving a handgun. The suspect fled on foot into a wooded area. The handler deployed his canine off lead after announcing two canine warnings. The off lead deployment was due to the possibility of the suspect being armed. The canine located the suspect and bit him on the right shoulder. The suspect complied with the handler’s commands and the canine was ordered to release the suspect. The suspect was apprehended without further incident. The suspect suffered a two inch laceration in his right arm pit. He was treated and released from the hospital.

The second canine bite occurred on August 9, 2004. This incident occurred after a Breaking and Entering suspect fled into a wooded area armed with a crowbar. The handler announced two canine warnings before starting a track with a 30 foot lead into the wooded area. The canine located the suspect and bit him on the right thigh. The handler ordered the suspect to show his hands. The suspect complied and the canine was immediately recalled without further incident. The suspect was transported to the hospital where he was treated for his injuries.

The third canine bite occurred on September 29, 2004. This incident occurred as a result of a radio run reporting “shots fired.” A suspect fled from a vehicle believed to be wanted in connection with the offense. Officers recovered a firearm from the vehicle. The suspect fled into a wooded area. The handler deployed his canine on a lead without a warning due to the possibility of the suspect being armed. The canine located the suspect and bit him on his right bicep and buttock. The handler ordered the suspect to show his hands. The suspect complied and the canine was immediately recalled without further incident. The suspect was transported to the hospital where he was treated for his injuries.

Canines were deployed in connection with 147 incidents during this period. As a result, 22 individuals were located with 3 of those persons being bitten by the dog. This equates to a 13.64% unit bite ratio. The statistics generated by the Canine Deployment Database have been included in Appendix Items 12 and 13.

Copies of the ten canine bite investigations which occurred between September 2003 and September 2004 have been forwarded to the Monitor.

In regards to the Monitor Team’s comments that the deployment forms (involving no canine bite) did not indicate announcements given by the handler, the Police Relations Section reviewed the forms from this quarter. It was noted that many forms continue to omit the announcement information. Canine handlers are issuing the announcements in the field, however, they are failing to consistently document the announcements (or exigent circumstances justifying no announcements) on their reports. This matter will

be addressed in the upcoming quarter. Either a drop down box will be added to the form or the narrative will provide the information.

In response to the Monitor being unclear as to what constitutes a canine bite, as discussed at the October All-Parties meeting, anytime a CPD canine puts its mouth on a suspect, it is reported as a canine bite. The canine bite ratio reports generated pursuant to MOA paragraph 20 are included in Appendix Items 14, 15, and 16. These reports examine the following six-month periods:

February 1, 2004 – July 31, 2004

March 1, 2004 – August 31, 2004

April 1, 2004 – September 30, 2004

Bite ratios for these periods remain below the 20% unit threshold.

E. Beanbag Shotguns / 40mm Foam Rounds / Pepperball

The MOA provisions relating to beanbag shotguns and 40mm foam rounds are located in paragraphs 21, 22, and 23.

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with the MOA requirements relating to the beanbag shotgun, the 40mm foam round launcher, and the Pepperball launcher. During the second quarter of 2004, there were no instances involving the deployment of any of these weapons.

Status Update

During the third period, there were no incidents involving the deployment of the 40 millimeter, beanbag shotgun, or Pepperball launcher.

IV. INCIDENT DOCUMENTATION, INVESTIGATION & REVIEW

A. Documentation

The MOA provisions relating to documentation are located in paragraph 24.

Monitor's Previous Assessment

In the previous report, the Monitor found the CPD to be out of compliance with the force incident reporting provisions. Specifically, the Monitor cited the following CPD reporting practices:

➤ **Form 18NC – Non-Compliant Suspect Arrestee Report**

The Monitor reviewed 11 Non-Compliant Suspect/Arrestee Reports. Each contained a narrative that sufficiently described the circumstances that led to the application of force during the arrest or detention of a subject. However, the Monitor noted that the reports did not include the supervisors' comments or determinations, i.e. an evaluation of the appropriateness of the officers' tactics and use of force. Therefore, the Monitor determined the CPD was not in compliance with this MOA requirement.

➤ **Takedowns with Injury**

A new reporting procedure was put in place for takedowns with injury starting July 1, 2004. The Monitor will review this new procedure in the next quarter.

Status Update

During this quarter, the CPD's assistant chiefs reviewed the Monitor's comments regarding the completion of the Form 18NC with the command staff. It was stressed that the supervisors' comments/determinations be included on future forms.

B. Investigation

The MOA provisions relating to investigation are located in paragraphs 26, 27, 28, 29, 30, and 31.

Monitor's Previous Assessment

The Monitor found the CPD's policies regarding the investigation of use of force incidents comply with the MOA. In regards to the Monitoring Team's review of force investigations, they found the CPD to be only in partial compliance citing the following issues:

- "In at least two incidents, the investigating supervisors did not conduct and then write up an appropriate investigation. We (the Monitor Team) do note, however, that the commanders who reviewed the investigative reports identified these

problems, required the sergeants to re-conduct the investigations, and sustained appropriate violations for both the sergeants and officers.”

- The CPD supervisors did not always evaluate the basis for the initial stop or seizure.

Status Update

The CPD believes the assessment should be in full rather than partial compliance in this area. The requirement states CPD supervisors will investigate each use of force incident, with evaluation of compliance with CPD policies and tactics, including the basis of any stop or seizure. If the investigating supervisor or a commanding officer addresses the problem area and it is subsequently corrected to where it meets the criteria of a complete and thorough investigation, it is the CPD’s belief that the requirement is met. This is consistent with the Monitor’s definition of compliance contained within the matrix of compliance standards.

Also, the CPD believes each Use of Force report addresses the evaluation of the initial stop by means of a check-box. According to Chief Tim Longo of the Monitoring Team, this check-off box is sufficient in meeting the evaluation requirement.

C. Review of Critical Firearms Discharges

The relevant provisions of the MOA are located at paragraphs 32, 33, and 34.

Monitor’s Previous Assessment

The CPD’s policy on critical firearm discharges complies with the MOA. The Firearms Discharge Board (FDB) Report for the November 2003 firearms discharge was in compliance with the MOA. The Monitor is waiting for the six discharge investigations to be completed which have occurred in 2004.

Status Update

There were no firearm discharges at suspects in the third quarter of 2004. In regards to the six outstanding investigations, their status is as follows:

Police Investigation Number	Status
04-pi-01	Submitted to the FDB on September 6, 2004
04-pi-02	Submitted to the FDB on October 26, 2004
04-pi-03	CIS review completed; IIS currently reviewing
04-pi-04	Submitted to the FDB on November 1, 2004
04-pi-05	Prosecutor reviewing case
Outside the CPD’s jurisdiction	Submitted to the FDB on June 24, 2004; FDB report was approved by Chief Streicher on October 5, 2004 ⁹

⁹ A copy of the FDB report is included in Appendix Item 17.

V. CITIZEN COMPLAINT PROCESS

A. Openness of the Complaint Process

Paragraphs 35 and 36 of the MOA deal with the openness of the complaint process.

Monitor's Previous Assessment

The CPD is in compliance with the complaint intake provisions of the MOA.

Status Update

The CPD continues to conduct inspections to ensure complaint forms and materials are available in police buildings, police vehicles, and the public places outlined in the MOA.

B. Means of Filing and Tracking Complaints

Paragraphs 37 and 38 of the MOA deal with the tracking and filing of complaints.

Monitor's Previous Assessment

Nothing Noted

Status Update

Nothing to report.

C. Investigation of Complaints

Paragraphs 39, 40, 41, 42, 43, 44, and 45 of the MOA deal with the investigation of complaints.

Monitor's Previous Assessment

IIS Investigations

One of the requirements under this section is for investigations to be completed within 90 days, absent exceptional circumstances. The Monitor noted that the CPD did not provide information as to whether there were extenuating circumstances causing delays in the cases taking longer than 90 days to complete. The Monitor suggests that supervisors request extensions on overdue cases and justify the request.

CCRP Investigations

Eighteen cases were reviewed. The Monitor determined the following:

- Two cases involved use of force complaints, and should have been investigated by IIS.
- They were all resolved in writing, and with one of the four dispositions required by the MOA.
- All were assigned a unique identifier and tracked in the complaint system.
- They were investigated by a supervisor who was not involved in the conduct that precipitated the complaint.
- All investigations were signed by a District Commander.
- Most of the investigations were completed within the proper time frame.
- All officers and complainants were interviewed.
- For each case, a report was written that included a description of the incident and a summary of evidence.

Time Period for Investigations

For IIS cases, 19 of the 63 cases cleared in the second quarter of 2004 took longer than 90 days to resolve. For the 83 CCRP cases reviewed, 12 exceeded the 90-day investigative requirement.

Status Update

IIS Investigations

Review of the data of IIS cases closed during the third quarter of 2004 revealed a total of 77 cases were cleared during this timeframe. Of those 77 cases, 24 exceeded the 90-day investigative requirement.

In regards to the Monitor's comments about overdue cases, investigators document a request for an extension when they are not able to meet the 90-day requirement. Once approved through the chain-of-command, these requests are filed in the corresponding case jackets. An example of such a request is included in Appendix Item 18.

In regards to the use of force cases, the CPD requests the Monitor to identify the subject cases for clarification and action, if necessary.

A summary of closed IIS cases during this quarter is included in Appendix Item 19.

CCRP Investigations

Review of the data of CCRP cases closed during the third quarter of 2004 revealed a total of 30 cases were cleared during this time frame. Of those 30 cases, only 1 exceeded the 90-day investigative requirement. This is a big improvement over last quarter (83 cases with 12 exceeding the limit).

A summary which outlines closed CCRP cases during this quarter is included in Appendix Item 20.

D. Adjudication of Complaints

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with the MOA requirement that each complaint be closed by one of the four dispositions.

Status Update

IIS Cases

During the third quarter of 2004, 77 cases involving 119 allegations were investigated and closed by IIS. Those cases were closed as follows:

Sustained	47
Sustained Other	0
Exonerated	0
Not Sustained	24
Unfounded	48

CCRP Cases

During the third quarter of 2004, 30 cases were investigated and closed through the CCRP process. Those cases were closed as follows:

Sustained	5
Sustained Other	0
Exonerated	10
Not Sustained	2
Unfounded	13

Also, this quarter the CPD received and processed 46 reports of favorable officer conduct reported on positive contact forms. In addition, there were 196 letters of commendation received recognizing outstanding performance of CPD officers.

E. CCA

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with the general operations provisions of the MOA. However, the Monitor did not have the data available to make a compliance determination with the provision requiring the CPD to take "appropriate action" when the City Manager "agrees" or "agrees in part" with CCA recommendations.

Status Update

In regards to the aforementioned provision, the CPD and the CCA are working together to identify the subject cases and note the action taken. It is hoped that the new Employee Tracking Solutions (ETS) will allow both agencies to share a common data base to ease the retrieval of this information.

VI. Management and Supervision

A. Risk Management and Supervision

Paragraphs 57-66 of the MOA are relevant to risk management and supervision.

Monitor's Previous Assessment

The Monitor reported that the CPD is in compliance with the MOA requirements for the ETS protocol and data input plan. The Monitor also reported that the CPD is in compliance in regards to the Manual Risk Management System requirement.

Status Update

➤ Employee Tracking Solution (ETS)

The ETS system went live on October 1, 2004, at 1201 hours. On that date, supervisors began entering data into the database. The vendor, CRISNET, is currently working on the data conversion for all old data to be imported into the system. This is expected to be completed in early November. At that time, the CPD will perform its first analysis. This analysis, for the third quarter of 2004, will be treated as a test analysis so that the analysis process can be refined to provide for the first official analysis in January 2005 based on data from the fourth quarter of 2004.

➤ Department Risk Management System (DRMS)

During this reporting period, six police officers exceeded the DRMS minimum threshold. The officers' supervisors met with the officers and reviewed the incidents. The intervention reports for the identified officers have been included in Appendix Item 21.

B. Audit Procedures

Paragraphs 67-69 of the MOA deal with Audit Procedures.

Monitor's Previous Assessment

The Monitor found the CPD to be in partial compliance with these provisions. The Monitor found deficiencies in the Inspections Section's quarterly CCRP audit and semi-annual IIS audit. Most notably:

- Audit checklists
- Documentation of which CCRP files were reviewed
- Determination by the Inspections Section of which IIS files will be audited, rather than by IIS
- Follow-up with complainants involved in CCRP cases (the Inspections Section was able to get the opinion of only one complainant last quarter)

Status Update

Inspections Section has reviewed the Citizen Complaint Resolution Process (CCRP) for the third quarter of 2004. Sixty-seven complaints were filed with the Department from July through September. A random audit of 20 cases was conducted on the closed investigations. Deficiencies noted by the Monitor during the last audit were addressed. In regards to follow-up with complainants, Inspections Section continues their attempts to contact complainants. However, only one complainant returned Inspections Sections' telephone calls. That complainant stated he was satisfied with the CCRP process.

The CCRP investigations were reviewed to ensure investigating supervisors addressed the complaints, used proper standards to reach conclusions, and made recommendations consistent with the findings and the disciplinary matrix.

Inspections Section reviewed the following criteria:

- Ensure CCRP complaints were entered into the database and the case files were in a secure area.
- Ensure necessary documentation was completed for each CCRP investigation.
- Ensure all files contained the appropriate documents.
- Ensure the investigating supervisor notified the complainant of the disposition and whether any corrective or disciplinary action was taken.

The audit revealed that CCRP investigations were complete, logged into the proper databases, and stored in secured locations. Complainants were contacted and advised of the investigations outcome and whether any corrective or disciplinary action was taken.

A summary of the audit was prepared on November 2, 2004, and is included in Appendix Item 22.

C. Video Cameras

MOA Paragraphs 70-72 deal with video camera requirements.

Monitor's Previous Assessment

The Monitor found the CPD to be in only partial compliance with these MOA provisions citing the following issues:

- Not all the cruisers are camera equipped.
- The Monitor reviewed one case where the officer did not activate the MVR during the traffic stop.
- The Monitor reviewed two cases where chemical irritant was used on arrested individuals in the back of the police car, and the incidents were not captured on the MVR.

Status Update

➤ Video Camera Implementation

Currently, 67 of the CPD's 236 marked units are not equipped with a MVR. The CPD has received funding in the amount of \$371,000 to purchase 62 Digital Video Data (DVD) units with the supporting hardware and equipment. These cameras have since been purchased and installation is ongoing. Currently, 31 of the digital units have been installed with the remaining projected to be completed by the end of the year. Until all units are equipped with MVRs, CPD supervisors will assign police vehicles with no MVRs as a last resort.¹⁰ Finally, the CPD has trained 34 officers in operating the new equipment. They in turn will use the "train the trainer" concept to instruct officers in the field.

D. Police Communications Technology

MOA Paragraphs 73 and 74 relate to police communications technology.

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with these provisions.

Status Update

➤ **Radio Replacement – 800 MHz Project**

Motorola is reporting a delay in completing the infrastructure necessary to support the new system because construction of two radio tower sites is not complete. The Taylorsport, Kentucky tower site is still awaiting various governmental approvals. According to the construction timeline, the towers are projected to come on line during the first quarter of 2005. In order to have training occur just prior to the system going on line, training will occur in February and/or March 2005.

➤ **New Communications Facilities**

Communications Center operations are expected to move from 310 Ezzard Charles Drive into the Radcliff Building during the first quarter of 2005. The backup site at the Spinney Field installation is ready to go on line once Motorola completes tower construction. Spinney continues to be available for training purposes.

➤ **Emergency 911 Phone System Replacement**

Replacement of the current 911 Phone System is still underway. The equipment has been shipped and is currently in storage awaiting installation into the Radcliff Building. Backroom hardware installation is projected to occur in November 2004.

Training will begin on the equipment in conjunction with radio system training so that all operations can be moved to the new facility around the same time. Once Emergency 911 Operators are trained, call taking operations will move to the

¹⁰ Procedure 12.537

Radcliff Building. Switchover to the new phone system is projected to occur in March 2005.

The City has allocated \$650,000 towards this project.

➤ **Computer Aided Dispatch (CAD) Replacement**

The replacement of the Computer Aided Dispatch (CAD) has been included in the City's Capital Improvement Program with an allocation of \$2,492,200 over three years beginning in 2003. In response to the RFP, five proposals were received. The proposals are currently being reviewed and a CAD demonstration is slated for November 2004. Pending progress, CAD replacement and switchover is expected to occur in late 2005 or early 2006.

E. Discipline and Promotional Policy

MOA Paragraphs 75-76 are relevant to discipline and promotional policy.

Monitor's Previous Assessment

The Monitor determined that the CPD is imposing appropriate discipline for serious violations and criminal conduct. However, the Monitor states it is not clear that discipline imposed for less serious violations is compliant with the MOA provisions.

The Monitor cites an incident where the Chief assessed a greater discipline than the matrix (apparently due to earlier violations of other rules within the same section), only to have it reduced by the Review Panel to the lower matrix level. The Monitor writes, "While we recognize that CPD has negotiated with the FOP over discipline issues, such as Peer Review, CPD needs to ensure that it can comply with the progressive discipline process for repeat violations that are not the exact same rule, even if negotiations with the FOP is needed."

Status Update

This is a contractual issue with the FOP. Discipline involving a written reprimand and/or a suspension of up to three days is eligible for Peer Review. The Peer Review Panel has the ability to do one of three things: sustain the Chief's findings, reduce it, or dismiss it. The Panel is not required to follow the progressive discipline process for repeat violations of the same section of the matrix. Given the numerous contentious items subject to discussion during labor negotiations, such as wages, Issue Five, and health care costs, it is unlikely that Peer Review process will be addressed this year.

VII. TRAINING

A. Use of Force – Management Oversight and Curriculum

MOA Paragraphs 77 – 87 are relevant to management oversight of training and training curriculum.

Monitor's Previous Assessment

The report finds the CPD to be in continuous substantial compliance with these provisions of the MOA, noting the quality and content of the Use of Force training provided has been consistent with the MOA. In future quarters, the Monitor has expressed an interest in assessing the CPD evaluation procedures used for the training.

Status Update

During this reporting period, the CPD's Use of Force policy has been reviewed in the following forums:

- During the fall of 2004, the annual firearms training resumed, including training on the Use of Force policy as part of the curriculum.
- Use of Force policy and related Use of Force scenarios were the topics of the roll call training program in July, August, and September of 2004.

Based on input from the various training sessions, the Police Academy conducted another needs assessment for training. Various training items were discussed at the Training Committee meeting held on August 19, 2004. A summary of the meeting is included in Appendix Item 23.

B. Handling Citizen Complaints

MOA Paragraph 82 is relevant to citizen complaint training.

Monitor's Previous Assessment

The Monitor noted that a new, three-week supervisors' training was held in April 2004. The Monitor Team had not observed the training or received a copy of the curriculum; therefore they were not able to determine the extent of compliance with this provision.

Status Update

In regards to the aforementioned supervisors' training, the citizen complaint process was covered on April 9, 2004. The training schedule and lesson plan are included in Appendix Item 24. No new supervisors' training occurred during the recent quarter.

C. Leadership/Command Accountability Training

Monitor's Previous Assessment

The Monitor found the CPD to be in compliance with this MOA provision.

Status Update

The CPD continues to develop command personnel through participation in outside training programs. During this quarter, one lieutenant is attending the Police Executive Leadership College through the Police Foundation. One lieutenant and one sergeant are attending the Southern Police Institute's Administrative Officers Course at the University of Louisville.

D. Canine Training

MOA paragraph 84 is relevant to canine training

Monitor's Previous Assessment

This quarter, representatives of the Department of Justice and the Monitors met with the CPD Canine supervisor and trainer to discuss handler control methodology. The Monitor states the only two issues to be further reviewed are: (1) whether the handlers are sufficiently in control (within sight and /or voice proximity) of their canines so that they can order their canine not to bite a suspect if the suspect surrenders by coming out from hiding, and (2) whether there are any apprehensions that the CPD determines not to be a bite, but where the canine does "hold" a part of the suspect's body.

Status Update

The CPD revised its policy and procedure related to the use of police canines. The policy and procedure has been approved by DOJ to be in compliance with the MOA provisions. Off leash deployments of police canines are strictly governed and restricted to commercial buildings or situations where the suspect is wanted for an offense of violence or is reasonably suspected to have a weapon. A supervisor's approval is required for an off leash deployment. Canines are only deployed in circumstances where the risk to the handler is great based on the offense and the potential that the suspect is armed.

The policy/procedure requires that the canine handler issue a loud and clear announcement that a canine will be deployed and to advise the suspect to surrender and remain still if approached by the police canine. The handler is required to wait for a sufficient interval after the announcement, and before the deployment, to allow the suspect to surrender. If the suspect does not clearly and unambiguously surrender, the canine is deployed. The warning requirement and the requirement that a suspect be given time to surrender are the best measures to insure surrendering suspects are not bitten. The suspect has an obligation to surrender in a fashion that does not endanger the canine handler, does create more risk, and is not done in a fashion that would

reasonably be interpreted as a subterfuge designed to create an opportunity to escape or attack the canine handler.

In the event a police canine encounters a suspect during an off leash deployment, and the suspect has actively resisted arrest and capture by continued concealment and by not clearly and unambiguously surrendering to the canine handler, the police canine will bite/hold the suspect. The canine handler is required to call off the police canine “at the first moment the canine can be safely released.”

There is a chance that the suspect may decide to surrender after the canine is deployed off leash but immediately prior to contact with the police canine. Cincinnati Police canines are highly trained and are immediately obedient to the canine handler’s verbal commands, including commands to stop and to release a bitten/hold suspect. Therefore, when the suspect announces a clear and unambiguous intention to surrender, the handler will order the police canine not to bite/hold.

Canine handlers deploy their canines beyond their sight, obviously, since an armed suspect hiding within sight of the handler could shoot the handler when found by the canine. Canine handlers do not deploy their canines beyond the range of their announcement/warning. Announcements are repeated as the search/track continues, insuring the handler is always within hearing range of a suspect who intends to surrender. (Procedure allows that in cases where an announcement would endanger the canine handler, an announcement will not be made.)

In regards to the Monitor’s concern on what constitutes a canine bite, as stated earlier in this report, anytime a canine puts its mouth on a suspect, whether there is a puncture/injury or not, the CPD reports it as a canine bite.

F. Scenario Based Training

MOA paragraph 85 is relevant to scenario-based training.

Monitor’s Previous Assessment

The CPD remains in compliance with this provision.

Status Update

During the third quarter of 2004, the CPD provided 2,239.7 hours of Roll Call Training. Several new scenarios taken from CPD incidents were added to the library. Other areas reviewed include:

- Procedure 12.180 Use of the Crisis Negotiation Team
- Procedure 12.110 Mentally Ill / Suicides
- Procedure 12.545 Use of Force
- Tactical Patrol Guide

The Roll Call Training calendars and summary for this quarter have been included in Appendix Items 25 and 26.

E. Revised Training Based on Review of Civil Lawsuits Pertaining to Officer Misconduct

MOA paragraph 86 is relevant to training based on civil lawsuits

Monitor's Previous Assessment

The CPD is in compliance with this provision.

Status Update

The quarterly meeting between the City Solicitor's office and the CPD took place on October 21, 2004. The following items were discussed:

- Appealed cases – The Roger Owensby decision was appealed in the Sixth Circuit Court. The issue in question involves the CPD's failure to provide medical care.
- In February 2004, the City sent the ACLU a recommendation for an alternative dispute resolution process to address claims with the city in lieu of a lawsuit.
- Stop and search issues will be one of the topics covered by the CPD's legal liaison during the annual in-service training.

The minutes from the meeting have been included in Appendix Item 27.

G. Orientation to the MOA

MOA paragraph 87 is relevant to MOA orientation training

Monitor's Previous Assessment

The City remains in compliance with this provision. However, the Monitor indicated a concern regarding officers who are unfamiliar with the contents of the MOA and the CA, and the role of the Monitor.

Status Update

The annual in-service training for supervisors and officers is scheduled to begin in the fourth quarter 2004. A block of instruction has been set aside for an update on the MOA and CA.

H. Field Training Officers

MOA Paragraphs 88-89 deal with the training of field training officers.

Monitor's Previous Assessment

The CPD is in compliance with the MOA provisions.

Status Update

The CPD has nothing to report this quarter.

I. Firearms Training

MOA Paragraphs 90-91 are relevant to firearms training.

Monitor's Previous Assessment

The Monitor finds the CPD to be in compliance with the firearms training provisions of the MOA.

Status Update

Annual firearms qualifications began during this quarter and approximately 400 sworn members of the CPD have completed the program as of September 30, 2004. In addition to the qualifications course, participants also review the Use of Force and Shots Fired policy and demonstrate proficiency with less than lethal force options such as the beanbag shotgun, Pepperball launcher, etc.

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